

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
July 6, 1999 Session

DIANA MORRIS v. STATE OF TENNESSEE

**Appeal from the Tennessee Claims Commission
No. 012174 William Baker, Commissioner**

No. M1999-02714-COA-RM-CV - Filed October 8, 2002

This appeal involves a dispute between the State of Tennessee and a former employee of the Department of Correction arising out of a work-related injury. After the Department discharged her for failing to return to work, the employee filed a retaliatory discharge claim with the Tennessee Claims Commission asserting that she had actually been fired because she had filed a workers' compensation claim. The Tennessee Court of Appeals determined that the Commission lacked subject matter jurisdiction over retaliatory discharge claims and vacated the Commission's \$300,000 award to the employee. While the employee's appeal was pending before the Tennessee Supreme Court, the Tennessee General Assembly retroactively broadened the Commission's jurisdiction to include retaliatory discharge claims. The Tennessee Supreme Court reversed this court's decision and remanded the case to this court for further consideration. We have determined that the Tennessee General Assembly may enact retroactive laws waiving the State's sovereign immunity with regard to past events, and we accede to the Tennessee Supreme Court's decision in this case that the General Assembly validated the results of this proceeding. We also have concluded that the Commission had authority to award front pay damages. Accordingly, we affirm the Commission's award.

**Tenn. R. App. P. 12(II) Direct Appellate Review; Judgment of the Tennessee Claims
Commission Affirmed**

WILLIAM C. KOCH, JR., J., delivered the opinion of the court, in which BEN H. CANTRELL, P.J., M.S., and WILLIAM B. CAIN, J., joined.

Paul G. Summers, Attorney General and Reporter, Michael W. Catalano, and Mark Alexis Hudson, for the appellant, State of Tennessee.

Bill Hodde, Madison, Tennessee, for the appellee, Diana Morris.

OPINION

I.

Diana Morris had worked as an account clerk in the pharmacy at the Tennessee State Penitentiary in Nashville for less than one year when she was injured on the job on August 24, 1990.

The wheels on her desk chair slid out from under her as she reached for a form causing her to strike her head on the corner of an adjacent desk. The resulting closed head injury caused Ms. Morris to have post-concussion headaches, decreased vision in her right eye, and left her with occasional seizures that prevented her from working.

According to Ms. Morris, she or her husband called the prison pharmacy daily while she was unable to work. Her supervisor was apparently unsympathetic about Ms. Morris's circumstances and urged her to "hurry up and get back to work." She told Ms. Morris that her absence from work "looked bad" on the whole department and on her as Ms. Morris's supervisor. When Ms. Morris mentioned the possibility of filing a workers' compensation claim, her supervisor told her not to file for workers' compensation and to put it on her insurance instead. Despite her supervisor's warning, Ms. Morris submitted a workers' compensation claim to the Department in mid-September 1990.

On September 25, 1990, shortly after the Department received her claim form, Ms. Morris received a letter from the warden informing her that she had exhausted all her sick and annual leave and requesting that she provide him with a physician's statement regarding when she would be able to return to work. The letter concluded: "If you are not able to return to full duty by October 5, 1990, our only option will be to separate you from state service." On the day following the warden's letter, Ms. Morris filed a workers' compensation claim with the Division of Claims Administration of the Department of Treasury.

On October 10, 1990, after Ms. Morris had not returned to work, the warden formally notified her that she had used all her sick and annual leave and that the Department had "no option but to separate you from state service." The warden also informed Ms. Morris that her termination would not affect her pending workers' compensation claim and that the Department would consider rehiring her when she fully recovered and desired to return to work.

The Division of Claims Administration partially granted Ms. Morris's claim for workers' compensation benefits but did not approve all her medical expenses. Accordingly, Ms. Morris filed a complaint with the Tennessee Claims Commission asserting that she was entitled to past and future medical payments as well as disability benefits. She also alleged that the Department had discharged her in retaliation for her seeking workers' compensation benefits. She requested the Commission to award her not only full workers' compensation benefits but also compensatory and punitive damages on her retaliatory discharge claim.

The Commission considered Ms. Morris's claims separately. In December 1993, it determined that Ms. Morris had sustained a work-related injury that had resulted in a ninety percent permanent partial disability. The Commission awarded Ms. Morris her medical expenses and 360 weeks of disability compensation. The Commission then turned its attention to Ms. Morris's retaliatory discharge claim, despite the State's argument that it lacked subject matter jurisdiction over claims of this sort. In September 1996, the Commission found that Ms. Morris had been discharged in retaliation for filing her workers' compensation claim and awarded her \$300,000 which it characterized as back pay and "prospective damages for the loss of future earnings."

While the State did not contest the workers' compensation award, it appealed the adverse decision on Ms. Morris's retaliatory discharge claim to this court. The State asserted that the Commission lacked subject matter jurisdiction over retaliatory discharge claims and lacked authority to award damages for front pay. On October 3, 1997, this court vacated the \$300,000 judgment on the retaliatory discharge claim after concluding that the Commission lacked subject matter jurisdiction over retaliatory discharge claims. *Morris v. State*, No. 01A01-9612-BC-00569, 1997 WL 607515 (Tenn. Ct. App. Oct. 3, 1997). Because of our decision regarding the jurisdictional issue, we did not address the State's second issue regarding the Commission's authority to award front pay. The Tennessee Supreme Court granted Ms. Morris's application for permission to appeal and, on March 1, 1999, issued an opinion unanimously affirming this court's decision. *Morris v. State*, 986 S.W.2d 212 (Tenn. 1999) (withdrawn from publication by court order). Ms. Morris filed a timely petition for rehearing which was denied by the Tennessee Supreme Court on March 31, 1999.

Even as Ms. Morris's case was pending before the Tennessee Supreme Court, the Tennessee General Assembly was considering legislation expanding the Commission's jurisdiction to include retaliatory discharge claims like hers. On March 22, 1999, the General Assembly passed an amendment to Tenn. Code Ann. § 9-8-310 expressly giving the Commission jurisdiction to consider retaliatory discharge claims filed against state departments and agencies.¹ The General Assembly also stated specifically that the Commission's new authority extended "to all cases filed with the Claims Commission on or after July 1, 1992, pending on appeal at the time of passage of this act . . ."² Governor Sundquist signed the bill on April 7, 1999, and it took effect on that date.

On April 8, 1999, Ms. Morris filed a second petition for rehearing in the Tennessee Supreme Court asserting that the freshly enacted amendment to Tenn. Code Ann. § 9-8-310 applied to her claim and, therefore, that Commission was now endowed with jurisdiction that it did not have in 1996. On May 24, 1999, a divided Tennessee Supreme Court issued an order concluding that, as a result of the 1999 amendment to Tenn. Code Ann. § 9-8-310, "[t]he commission did have subject matter jurisdiction to decide the plaintiff's claim for retaliatory discharge."³ Accordingly, the court granted Ms. Morris's petition for rehearing, withdrew its March 1, 1999 opinion, and remanded the case to this court for further proceedings – presumably to address the State's damages issue that had been pretermitted in the earlier proceeding. The court later denied the State's petition for rehearing without comment.⁴

¹ Act of Mar. 22, 1999, ch. 54, 1999 Tenn. Pub. Acts. 110.

² Act of Mar. 22, 1999, ch. 54, § 2, 1999 Tenn. Pub. Acts 110, 110.

³ *Morris v. State*, No. 01S01-9804-BC-00076, at 2 (Order, Tenn. May 24, 1999).

⁴ *Morris v. State*, No. 01S01-9804-BC-00076 (Tenn. June 21, 1999).

II.

Before addressing the State's challenge to the Commission's damage award, we find it necessary to point out a substantial question regarding the application of the 1999 amendment of Tenn. Code Ann. § 9-8-310 to this case. We are not referring to the State's assertion that Ms. Morris's claim does not qualify as one of the pre-April 7, 1999 claims that can be considered by the Commission because it was not "pending or on appeal" when the 1999 amendment became effective.⁵ Rather, we are referring to the fact the 1999 amendment contains no language stating or implying that the amendment validates or ratifies the results of a proceeding that was patently beyond the Commission's subject matter jurisdiction when it was conducted.

A.

The Tennessee Supreme Court construed the 1999 amendment to Tenn. Code Ann. § 9-8-310 as validating the results of the Commission's 1996 proceeding. Doing so appears to be a departure from the court's earlier holding that, when the substantive law changes while a case is on appeal, the court will apply the law as it stood at the time of trial. *Gaines v. Catron*, 20 Tenn. (1 Hum.) 513, 522 (1840).⁶ This case does not require us to speculate whether the court intended to align Tennessee with the majority of jurisdictions in which the appellate courts apply the law as it exists at the time of the appeal unless doing so would interfere with a vested right⁷ or whether the court simply intended to recognize an exception to the long-standing rule in *Gaines v. Catron* for explicitly

⁵The State argued unsuccessfully before the Tennessee Supreme Court and argues again before this Court that the 1999 amendment to Tenn. Code Ann. § 9-8-310 could not apply to Ms. Morris's claim because her claim was not, in the words of Chapter 54, § 2, "pending or on appeal at the time of the passage of this act." This argument is premised on the notion that no appeal could have been pending after March 31, 1999, when the Tennessee Supreme Court denied Ms. Morris's first petition for rehearing. This argument overlooks two things: first, Tenn. R. App. P. 39(f) which permits the filing of successive petitions for rehearing in the Tennessee Supreme Court and second, Tenn. R. App. P. 42(a) which provides that Tennessee Supreme Court mandates will not issue until eleven days after the entry a judgment unless the court orders otherwise. By operation of these two rules, the Tennessee Supreme Court's mandate following the denial of Ms. Morris's first petition for rehearing could not have issued until April 12, 1999. Ms. Morris filed her second petition for rehearing on April 8, 1999 – well within the 10-day period for filing petitions for rehearing prescribed by Tenn. R. App. P. 39(b). The timely filing of the second petition for rehearing had the effect of staying the issuance of the mandate in accordance with Tenn. R. App. P. 42(b). Accordingly, Ms. Morris's appeal was still pending on April 7, 1999, when the amendment became effective upon Governor Sundquist's signature.

⁶Relying on *Gaines v. Catron*, the court declined to validate the registration of a deed based on a change in the registration laws occurring after the trial court had invalidated the deed. *Garnett v. Stockton*, 26 Tenn. (7 Hum.) 84, 85-86 (1846).

⁷See, e.g., *Bradley v. School Bd. of Richmond*, 416 U.S. 696, 711, 94 S. Ct. 2006, 2016 (1974); *Outdoor Sys., Inc. v. Cobb County*, 555 S.E.2d 689, 691 (Ga. 2001); *Premier Prop. Mgt., Inc. v. Chavez*, 728 N.E.2d 476, 481 (Ill. 2000); *Unnamed Physician v. Commission on Med. Discipline*, 400 A.2d 396, 402 n.8 (Md. 1979); *Interstate Power Co. v. Nobles County Bd. of Comm'rs*, 617 N.W.2d 566, 575 (Minn. 2000); *Rosenberg v. Rosenberg*, 481 N.Y.S.2d 617, 618-19 (Sup. Ct. 1984).

retroactive statutory changes.⁸ No matter what the court's intention may have been, the practical effect of its May 24, 1999 order is the same. The court has applied the 1999 amendment to Tenn. Code Ann. § 9-8-310 to a 1996 proceeding.

The Tennessee General Assembly's power to enact the 1999 amendment to Tenn. Code Ann. § 9-8-310 cannot be disputed. The General Assembly may enact legislation affecting public rights that are still at issue in a pending judicial proceeding.⁹ Thus, it may enact retroactive legislation to cure defects in acts done or to authorize or ratify the exercise of power by a public official as long as two requirements are satisfied. First, the General Assembly must have originally had the authority to confer the power or to authorize the act. *Bozeman v. State ex rel. Anderson*, 206 Tenn. 23, 28, 330 S.W.2d 553, 555 (1959); *Cincinnati, New Orleans & Texas Ry. v. Rhea County*, 194 Tenn. 167, 172, 250 S.W.2d 60, 62 (1952); *Soukup v. Sell*, 171 Tenn. 437, 442-43, 104 S.W.2d 830, 832 (1937); *Malone v. Peay*, 159 Tenn. 321, 325-26, 17 S.W.2d 901, 903 (1929). Second, the curative legislation must not impair contracts or disturb vested private rights. *Anderson v. Memphis Hous. Auth.*, 534 S.W.2d 125, 127 (Tenn. Ct. App. 1975); *see also Hewitt v. Rincon Del Diablo Mun. Water Dist.*, 165 Cal. Rptr. 545, 552 (App. Ct. 1980); *State ex rel. Tomasic v. Kansas City*, 636 P.2d 760, 775 (Kan. 1981); *Priest v. Canada Life Assurance Co.*, 446 N.W.2d 352, 354 (Mich. Ct. App. 1989).

The 1999 amendment of Tenn. Code Ann. § 9-8-310 became effective while Ms. Morris's appeal was still pending,¹⁰ and it satisfies both requirements for valid curative legislation. First, Tenn. Const. art. I, § 17 unquestionably gives the General Assembly broad authority to waive the state's sovereign immunity to permit claims or lawsuits against the State.¹¹ The General Assembly

⁸*See, e.g., Collins v. Collins*, 543 S.E.2d 672, 678 n.10 (W. Va. 2000) (stating that the primary exception to the rule requiring appellate courts to apply the law that was in effect at the time of the relevant events occurs when a rule of law applies retroactively).

⁹The General Assembly cannot enact curative legislation to impair private rights vested by a final judgment by a court. *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421, 429 (1856); *People ex rel. Leaf v. Orvis*, 30 N.E.2d 28, 31 (Ill. 1940). This principle, however, does not foreclose legislative action when private rights are not involved. *Hodges v. Snyder*, 261 U.S. 600, 603, 43 S. Ct. 435, 436 (1923); *Atlantic City Casino Ass'n v. City of Atlantic City*, 525 A.2d 1109, 1113 (N.J. Super. App. Div. 1985).

¹⁰The General Assembly may determine an Act's effective date. Tenn. Const. art. II, § 20. However, an effective date provision stating that an Act becomes effective before it is actually passed is a nullity. A bill is not deemed enacted until all the actions required by Tenn. Const. art. II, § 18 have occurred. *City of Nashville v. Browning*, 192 Tenn. 597, 603, 241 S.W.2d 583, 585-86 (1951); *Logan v. State*, 50 Tenn. (3 Heisk.) 442, 444 (1871). The 1999 amendment provided that it would apply to "all cases filed with the . . . Commission on or after July 1, 1992, pending or on appeal at the time of passage of this act . . ." The General Assembly completed action on the bill on March 22, 1999, but the bill could not take effect until April 7, 1999, when the Governor signed it. Accordingly, we construe the 1999 amendment to apply to cases pending or on appeal when the amendment became effective.

¹¹Decisions to grant, withdraw, or restrict waivers of sovereign immunity are matters of legislative grace. *Sikes v. Candler County*, 274 S.E.2d 464, 466 (Ga. 1981); *Withers v. University of Kentucky*, 939 S.W.2d 340, 344 (Ky. 1997). Thus, the General Assembly may, if it chooses, appropriate funds to compensate individuals for damages attributable to the State. It may also enact legislation permitting an individual or defined group of individuals to file a claim or to

(continued...)

has possessed this power since the adoption of Tennessee's first constitution in 1796. Thus, the General Assembly could have authorized retaliatory discharge claims when it created the Commission in 1984 just as it did fifteen years later. Second, the curative legislation did not disturb or destroy vested private rights, including rights embodied in a final judgment. The right involved here was a public right – the State's right to immunity from suits for money damages. A state may enact laws waiving or impairing its own rights, *Louisiana Pub. Facilities Auth. v. Foster*, 795 So. 2d 288, 293 (La. 2001); *American Mut. Liability Ins. Co. v. Commonwealth*, 398 N.E.2d 491, 496 (Mass. 1979); *Morris v. Calvert*, 329 S.W.2d 117, 123 (Tex. Civ. App. 1959) (Hughes, J., dissenting), and may even impose on itself new liabilities with respect to transactions already past. *Santangelo v. State*, 601 N.Y.S.2d at 309. Accordingly, the 1999 amendment to Tenn. Code Ann. § 9-8-310 was an appropriate exercise of the General Assembly's power under Tenn. Const. art. I, § 17.

B.

Deciding that the General Assembly had the power to ratify the Commission's \$300,000 award to Ms. Morris does not necessarily mean that the 1999 amendment to Tenn. Code Ann. § 9-8-310 actually ratified the award. The legal effect of the amendment depends on its language.

The responsibility for determining what a statute means rests with the courts. *Roseman v. Roseman*, 890 S.W.2d 27, 29 (Tenn. 1994); *Realty Shop, Inc. v. R.R. Westminster Holding, Inc.*, 7 S.W.3d 581, 601 (Tenn. Ct. App. 1999). We must ascertain and then give the fullest possible effect to the General Assembly's purpose in enacting the statute as reflected in the statute's language. *Stewart v. State*, 33 S.W.3d 785, 790-91 (Tenn. 2000); *Lavin v. Jordon*, 16 S.W.3d 362, 365 (Tenn. 2000). In doing so, we must avoid constructions that unduly expand or restrict the statute's application. *Robinson v. LeCorps*, ___ S.W.3d ___, ___, 2002 WL 2023110, at *2 (Tenn. 2002); *Watt v. Lumbermens Mut. Cas. Ins. Co.*, 62 S.W.3d 123, 127-28 (Tenn. 2001).

Our construction of a statute is more likely to conform with the General Assembly's purpose if we approach the statute presuming that the General Assembly chose its words purposely and deliberately, *Tidwell v. Servomation-Willoughby Co.*, 483 S.W.2d 98, 100 (Tenn. 1972); *Merrimack Mut. Fire Ins. Co. v. Batts*, 59 S.W.3d 142, 151 (Tenn. Ct. App. 2001), and that the words the General Assembly chose convey the meaning it intended them to convey. *Limbaugh v. Coffee Med. Ctr.*, 59 S.W.3d 73, 83 (Tenn. 2001); *BellSouth Telecomms., Inc. v. Greer*, 972 S.W.2d 663, 673 (Tenn. Ct. App. 1997). Thus, we must construe statutes as we find them, *Jackson v. Jackson*, 186 Tenn. 337, 342, 210 S.W.2d 332, 334 (1948); *Pacific Eastern Corp. v. Gulf Life Holding Co.*, 902 S.W.2d 946, 954 (Tenn. Ct. App. 1995), and our search for a statute's purpose must begin with the words of the statute itself. *Blankenship v. Estate of Bain*, 5 S.W.3d 647, 651 (Tenn. 1999); *State ex*

¹¹(...continued)

bring suit against the State. See *Texas Dep't of Transp. v. Jones*, 8 S.W.3d 636, 638 (Tex. 1999). Likewise, it may enact legislation, as it did in 1984, establishing a procedure for making claims against the State. The General Assembly may also broaden the scope of the existing claims procedure to permit or revive claims against the State, even claims that have been reduced to a final judgment. *State Dep't of Transp. v. Felmer*, 266 So. 2d 670, 671 (Fla. 1972); *Datz v. Brinson*, 430 S.E.2d 823, 824 (Ga. Ct. App. 1993); *Santangelo v. State*, 601 N.Y.S.2d 305, 309 (App. Div. 1993).

rel. Comm'r of Transp. v. Medicine Bird Black Bear White Eagle, 63 S.W.3d 734, 754 (Tenn. Ct. App. 2001).

We must give a statute's words their natural and ordinary meaning unless the context requires otherwise. *Frazier v. East Tenn. Baptist Hosp.*, 55 S.W.3d 925, 928 (Tenn. 2001); *Mooney v. Sneed*, 30 S.W.3d 304, 306 (Tenn. 2000). Because words are known by the company they keep, *State ex rel. Comm'r of Transp. v. Medicine Bird Black Bear White Eagle*, 63 S.W.3d at 754, we should construe the words in a statute in the context of the entire statute and in light of the statute's general purpose. *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn. 2000); *Lyons v. Rasar*, 872 S.W.2d 895, 897 (Tenn. 1994). When the meaning of statutory language is clear, we must interpret it as written, *Kradel v. Piper Indus., Inc.*, 60 S.W.3d 744, 749 (Tenn. 2001); *ATS Southeast, Inc. v. Carrier Corp.*, 18 S.W.3d 626, 629-30 (Tenn. 2000), rather than using the tools of construction to give the statute another meaning. *Limbaugh v. Coffee Med. Ctr.*, 59 S.W.3d at 83; *Gleaves v. Checker Cab Transit Corp.*, 15 S.W.3d 799, 803 (Tenn. 2000).

The courts hold the General Assembly to a heightened standard of clarity when it wields its power under Tenn. Const. art. I, § 17 to waive the State's sovereign immunity. On these occasions, the General Assembly must act with precision because legislation narrowing the State's sovereign immunity is in derogation of the State's common-law exemption from suit. *Beare Co. v. Olsen*, 711 S.W.2d 603, 605 (Tenn. 1986); *State ex rel. Allen v. Cook*, 171 Tenn. 605, 611, 106 S.W.2d 858, 860-61 (1937). While this heightened standard does not limit the scope of the General Assembly's power, it obligates the General Assembly to act plainly, clearly, and unmistakably when it authorizes suits or claims against the state. *Brewington v. Brewington*, 215 Tenn. 475, 479, 387 S.W.2d 777, 779 (1965) (holding that acts authorizing claims against the State must be "plain, clear and unmistakable"); *Daley v. State*, 869 S.W.2d 338, 340 (Tenn. Ct. App. 1993). The courts lack the authority to abrogate the State's sovereign immunity on their own; therefore, they must avoid inadvertently broadening the scope of legislation authorizing suits or claims against the State. *Hill v. Beeler*, 199 Tenn. 325, 329, 286 S.W.2d 868, 869 (1956); *Stokes v. University of Tennessee*, 737 S.W.2d 545, 546 (Tenn. Ct. App. 1987).

The 1999 amendment to Tenn. Code Ann. § 9-8-310 is straightforward and clear. It contains two substantive provisions. First, it prohibits entities of state government from terminating a state employee solely for filing a workers' compensation claim. Tenn. Code Ann. § 9-8-310(a). Second, it provides employees who are discharged for filing a workers' compensation claim with a choice of two remedies – filing a grievance or filing a claim for damages with the Commission. Tenn. Code Ann. § 9-8-310(b). By explicitly authorizing employees to file a retaliatory discharge claim with the Commission, the 1999 amendment necessarily expanded the Commission's subject matter jurisdiction to adjudicate these claims.

In addition to expanding the subject matter jurisdiction of the Commission to include retaliatory discharge claims, the 1999 amendment to Tenn. Code Ann. § 9-8-310 clearly gave the Commission authority to hear and decide certain retaliatory discharge claims that had accrued before its effective date. These claims included those filed with the Commission on or after July 1, 1992,

that were still pending or on appeal when the 1999 amendment became effective.¹² Thus, once the 1999 amendment took effect, the Commission clearly had the authority to hear and decide Ms. Morris's claim because she filed it on or after July 1, 1992, and because it was still on appeal when the 1999 amendment took effect.

Giving the Commission jurisdiction to adjudicate claims accruing before the expansion of its subject matter jurisdiction is not the same as ratifying awards handed down by the Commission when it lacked jurisdiction to do so. The language of the 1999 amendment does not plainly, clearly, and unmistakably express the General Assembly's intent or desire to ratify or confirm any award of damages for retaliatory discharge damages the Commission might have made prior to April 7, 1999. In fact, nothing in the 1999 amendment can reasonably be construed as ratifying any award of damages for retaliatory discharge.¹³ Thus, the 1999 amendment to Tenn. Code Ann. § 9-8-310 should not be construed as validating the results of the Commission's 1996 proceeding involving Ms. Morris's claim. At most, it gives Ms. Morris an opportunity to now present her claim to the Commission for adjudication de novo.

C.

In its May 24, 1999 order, the Tennessee Supreme Court concluded that “[t]he commission did have subject matter jurisdiction to decide the plaintiff's claim for retaliatory discharge.” As we understand this language, the court must have decided that the 1999 amendment cured the jurisdictional defect in the Commission's 1996 proceeding involving Ms. Morris's claim. The effect of the court's decision will be to validate the Commission's \$300,000 award to Ms. Morris unless the State prevails with its argument that the Commission does not have the authority to award front pay damages.

Even though we disagree with the Tennessee Supreme Court's conclusion regarding the legal effect of the 1999 amendment to Tenn. Code Ann. § 9-8-310, we have no authority to disregard it. *Payne v. Johnson*, 2 Tenn. Cas. (Shannon) 542, 543 (1877). As an intermediate appellate court, we must follow the directives of the Tennessee Supreme Court, particularly when the “court has given definite expression to its views in a case after careful consideration.” *Holder v. Tennessee Judicial Selection Comm'n*, 937 S.W.2d 877, 881 (Tenn. 1996); *Barger v. Brock*, 535 S.W.2d 337, 341 (Tenn. 1976). Therefore, we accede to the Tennessee Supreme Court's construction of the 1999 amendment to Tenn. Code Ann. § 9-8-310 and, for the purpose of this opinion, we will base our analysis on the premise that the Commission had subject matter jurisdiction in 1996 to award Ms. Morris money damages for her retaliatory discharge claim.

¹²In the amendment's own terms, the Commission's expanded subject matter jurisdiction applied to “all cases filed with the . . . Commission on or after July 1, 1992, pending or on appeal . . .” Act of Mar. 22, 1999, ch. 54, § 2, 1999 Tenn. Pub. Acts 110.

¹³The language of the 1999 amendment to Tenn. Code Ann. § 9-8-310 is so clear that it obviates consulting legislative history to ascertain the General Assembly's purpose. However, we have reviewed the committee and floor debates regarding the 1999 amendment to Tenn. Code Ann. § 9-8-310 and its 1998 predecessor. At no time during these discussions did a legislator state that these bills would ratify the decisions made by the Commission when it lacked jurisdiction.

III.

The only matter left to be addressed is the Commission's decision to award Ms. Morris front pay. The State asserts that the commission exceeded its statutory authority by awarding front pay because it is an equitable remedy that the Commission has not been empowered to grant. We have determined that Tenn. Code Ann. § 9-8-307(a)(1) (Supp. 2001) permits the Commission to award prospective monetary damages for the loss of earnings that an employee would have earned had he or she not been wrongfully terminated.

The Commission determined that the State had acted in an "egregious manner" by firing Ms. Morris in retaliation for her filing of a workers' compensation claim. After determining that reinstatement was not feasible, the Commission set out to make Ms. Morris whole by awarding her damages without providing her a windfall. Mindful of the cap on damages in Tenn. Code Ann. § 9-8-307(e), the Commission awarded Ms. Morris \$300,000 after determining that she was entitled to \$16,954.36 in back pay and approximately \$298,881 in front pay.

The State does not take exception with the Commission's findings that the conduct of Ms. Morris's supervisor was egregious or that reinstating Ms. Morris to her former job was not feasible. The State likewise does not take issue with the Commission's decision to award Ms. Morris \$16,954.36 in back pay, and it does not even assert that the evidence in the record does not support the Commissioner's front pay award. It simply claims that the Commission lacks statutory authority to award front pay.

The Commission, as a statutory administrative agency, does not have the inherent judicial powers vested in Tennessee's Article VI courts. Its powers are limited to those expressly granted by statute or necessarily required to enable it to fulfill its statutory mandate. *Sanifill of Tenn., Inc. v. Tennessee Solid Waste Disposal Control Bd.*, 907 S.W.2d 807, 810 (Tenn. 1995); *State ex rel. Comm'r of Transp. v. Medicine Bird Black Bear White Eagle*, 63 S.W.3d at 769. Thus our search for the Commission's power to award front pay damages must begin with its enabling legislation.

Tenn. Code Ann. § 9-8-307 does not expressly authorize the Commission to grant equitable relief. However, Tenn. Code Ann. § 9-8-307 explicitly empowers the Commission to "determine all monetary claims against the state" based on defined acts or omissions of state employees.¹⁴ It also provides that the State can be held liable for up to \$300,000 in actual damages per claimant¹⁵ and that the State may not be ordered to pay punitive damages.¹⁶ Thus, the dispositive question is whether an award of front pay damages is a monetary award of actual damages.

¹⁴Tenn. Code Ann. § 9-8-307(a)(1).

¹⁵Tenn. Code Ann. § 9-8-307(d), (e).

¹⁶Tenn. Code Ann. § 9-8-307(d).

In an earlier case involving the allocation of responsibility for calculating front pay, we held that trial courts, rather than juries, should calculate front pay because it is an “equitable remedy.” *Sasser v. Averitt Express, Inc.*, 839 S.W.2d 422, 435 (Tenn. Ct. App. 1992). However, we also pointed out that front pay is a substitute for the equitable remedy of reinstatement and that it amounts to an award of prospective monetary damages for the loss of future earnings. *Sasser v. Averitt Express, Inc.*, 839 S.W.2d at 433-435. Thus, front pay is monetary relief intended to compensate an employee for the loss of future earnings. *Coffey v. Fayette Tubular Prods.*, 929 S.W.2d 326, 332 (Tenn. 1996); Greg N. Grimsley, Note, *Front Pay – Prophylactic Relief Under Title VII of the Civil Rights Act of 1964*, 29 Vand. L. Rev. 211, 212 (1976). As Judge Richard Posner has noted, front pay is designed “to monetize” the value of an employee’s future compensation denied to him or her by the employer’s wrongful act. *Fortino v. Quasar Co.*, 950 F.2d 389, 398 (7th Cir. 1991). Measured as the present value of future income the discharged employee would have earned, less any mitigation, a front pay award reflects the monetary value of the harm resulting from the adverse employment action. Brian S. Felton, Note, *Jury Computation of Front Pay Under the Age Discrimination in Employment Act*, 76 Minn. L. Rev. 985, 1006 (1992).

Recognizing that front pay is a form of monetary relief provides the answer to the State’s argument against the front pay damages in this case. Tenn. Code Ann. § 9-8-307(a)(1) empowers it “to determine all monetary claims against the [S]tate.” A claimant seeking damages for wrongful acts or omissions of state employees is, in fact, making a monetary claim. See *In re Cottonwood Canyon Land Co.*, 146 B.R. 992, 999 (Bankr. D. Colo. 1992) (holding that a plaintiff is making a monetary claim if the only thing a losing defendant can do is to pay out money). Thus, when Ms. Morris sought front pay damages, she was making a monetary claim against the State that was clearly within the Commission’s power to adjudicate. Accordingly, we conclude that the Commission did not exceed its jurisdiction when it awarded Ms. Morris \$298,881 in front pay damages.

IV.

We affirm the Commission’s \$300,000 award to Ms. Morris and remand the case to the Commission for whatever further proceedings consistent with this opinion may be required. We tax the costs of this appeal to the State of Tennessee.

WILLIAM C. KOCH, JR., JUDGE